INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	6
Argument	
I. Section 10 of the Immigration Act of 1917, as amended, imposes upon officers of vessels a duty to prevent the landing in the United States of an alien passenger who embarked at a foreign port for through passage via American ports to another foreign port	8
A. The literal meaning of the phrase "bringing an alien * * * to the United States" imposes a duty in the case at bar	9
B. If the literal meaning of the section were doubtful, it should be construed to impose a duty in a case of this sort, in order to avoid a grave risk of entries by undesirable aliens, and in order to prevent a breach in an otherwise complete system of immigration regulation	19
II. Section 10 of the Immigration Act of 1917, as amended, *ipso facto* imposes a duty to detain, and no notice from the immigration authorities is required as a condition precedent to the existence of the obligation	29
III. If a notice to detain is a condition precedent to the existence of a duty to detain, the notice in this case was in proper form and properly served	33
Conclusion	37

CITATIONS

Cases:

Church of the Holy Trinity v. *United States*, 143 U. S. 457	17
Clark v. *Williard*, 294 U. S. 211	36
Compagnie Generale Transatlantique v. *Elting*, 298 U. S. 217	26, 29, 33, 35, 36
Cunard S. S. Co. v. *Mellon*, 262 U. S. 100	18
Dollar S. S. Line v. *Elting*, 51 F. (2d) 1035	9, 18, 25
Habana, The, 63 F. (2d) 812	9, 11, 18

Cases—Continued. Page

Lloyd Sabaudo Societa v. *Elting*, 45 F. (2d) 405 s. c. 55 F. (2d) 1048 ... 27
Lloyd Sabaudo Societa v. *Elting*, 287 U. S. 329 ... 26
Manuel Arnus, The, 75 F. (2d) 943, cert. den. 295 U. S. 756 ... 26
Morehead v. *People ex rel. Tipaldo*, Oct. Term, 1935, No. 838, June 1, 1936 ... 36
Nanking, The, 290 Fed. 769 ... 28
Taylor v. *United States*, 207 U. S. 120 ... 6, 9, 13, 14–16, 17, 27
United States v. *Steamship Coamo*, 267 U. S. 220 ... 26, 35
Wilson, The, v. *United States*, Fed. Case No. 17,846, 30 Fed. Cas. 239 ... 17

Statutes:

Act of May 22, 1918, c. 81, 40 Stat. 559 ... 21
Act of March 2, 1921, c. 113, 41 Stat. 1205 ... 21
Act of March 4, 1929, c. 690, 45 Stat. 1551, sec. 2 ... 20, 31
Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217, sec. 18 ... 13, 30
Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874:
Sec. 1 ... 20
Sec. 3 ... 13
Sec. 4 ... 13
Sec. 6 ... 12
Sec. 7 ... 12
Sec. 8 ... 12
Sec. 9 ... 12, 25
Sec. 10 ... 2, 4, 6, 8, 30
Sec. 10 (b) ... 30
Sec. 11 ... 12, 22
Sec. 14 ... 13
Sec. 15 ... 32, 35
Sec. 16 ... 13
Sec. 18 ... 22
Sec. 19 ... 13
Sec. 23 ... 31
Sec. 32 ... 26
Immigration Act of May 26, 1924, c. 190, 43 Stat. 153:
Sec. 3 (2) ... 20
Sec. 14 ... 20
Sec. 20 ... 26
Sec. 20 (a) ... 29
Sec. 24 ... 35
Sec. 26 ... 12, 25
Sec. 27 ... 2, 4, 6, 8, 31
Sec. 28 (b) ... 20

Miscellaneous:

	Page
Century Dictionary and Cyclopedia, Vol. 1, p. 685	11
Executive Order No. 6166, June 10, 1933	31
Executive Order No. 5426, Aug. 20, 1930	21, 35
Immigration Laws and Rules of Jan. 1, 1930, Rule 3, Subdivision H, par. 6	21, 35
Murray, *New English Dictionary*, Vol. 1, p. 1107	11
Report of the Senate Committee on Immigration, Senate Report No. 355 (Calendar No. 297) 63d Cong., 2d Sess., March 19, 1914	10
Standard Dictionary (1894) Vol. 1, p. 239	11
Webster, *New International Dictionary* (2d ed., unabridged, 1936), p. 337	11

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court appear at R. 7–8, and are reported in 1935 American Maritime Cases, 1176. The opinion of the Circuit Court of Appeals, R. 14–18, is reported in 84 F. (2d) 482.

JURISDICTION

The judgment sought to be reviewed was entered June 10, 1936. (R. 18.) A petition for a writ of certiorari was filed July 24, 1936, and granted Oc-

tober 12, 1936. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 10 of the Immigration Act of 1917, as amended by Section 27 of the Immigration Act of 1924, imposes a penalty on an officer of a vessel who, having been notified by the immigration authorities to detain on board an alien who had embarked at a foreign port for through passage via American ports to another foreign port, failed to prevent the landing in the United States of that alien.

STATUTE INVOLVED

Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146), provides:

> SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the Immigration officers. Any such person, owner, master,

officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

STATEMENT

The evidence is not reported, but the District Court made findings of fact under Admiralty Rule 46½ (R. 7–8) which the parties have stipulated "shall be taken as true" (R. 13), and which may be summarized as follows:

The Steamship "Santos Maru", belonging to the petitioner, Osaka Shosen Kaisha Line, arrived at the port of New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board.

Sprovieri was not bound for the United States and not entitled to enter the United States, but was en route from Brazil to Japan. "Upon the arrival of such Steamship at New Orleans, the Immigration Officers there issued an Order in writing to the Steamship to hold the alien on board at all ports of the United States at which such Steamship might touch. This Order was duly served upon the Officers of the Steamship." (R. 7, fdg. b.)

On June 19, 1932, the Steamship arrived at the port of Galveston, Texas, "and the said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law." (R. 7–8, fdg. c). "Such Steamship Officers notified the United States Immigration Authorities of the escape of the said alien passenger, but such Steamship sailed before his arrest." (R. 8, fdg. d.) Later the alien was arrested in Galveston and deported on another vessel of the petitioner. "Thereafter notice was given such Steamship Line of the intention of the Government to proceed against it and the 'Santos Maru' for violation of" Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146). (R. 8, fdg. e.)

"It being in the opinion of the Secretary of Labor impractical and inconvenient to prosecute the

matter criminally" (R. 8, fdg. f), the Government filed a libel *in rem* against the vessel "Santos Maru" in the United States District Court for the Southern District of Texas. This libel, after setting forth the facts in much the same manner as we have just done, stated (R. 3–4, pars. IV, V):

> IV
>
> That by reason of all the foregoing allegations, the owners, masters, officers and agents of the S. S. "SANTOS MARU" are liable to the United States for a penalty of One Thousand Dollars ($1,000.00); that said penalty is now owing and unpaid.
>
> V
>
> That by reason of all the foregoing allegations, such penalty of One Thousand Dollars, now due and owing to the United States, is a lien upon the S. S. "SANTOS MARU," whose owners, masters, officers and agents had violated the provisions of Section 146, Title 8, United States Code annotated in the manner and form aforesaid.

To enforce this lien, the libel prayed that the United States have a decree for its debt and penalty of $1,000 and that the vessel be forfeited to the United States or sold to satisfy its lien. (R. 4, par. VI.)

The District Court held that the Government was not entitled to recover (R. 8) and therefore entered a decree dismissing the libel (R. 9). That

court based its decision upon the ground that Section 10 of the Immigration Act of 1917, as amended by Section 27 of the Act of 1924, did not apply to an alien "through passenger." Upon an appeal by the Government (R. 10), the Circuit Court of Appeals for the Fifth Circuit reversed the decree of the District Court and remanded the case with instructions to enter a decree in favor of the United States (R. 18). A petition for certiorari was filed in this Court July 24, 1936 (R. 21) and granted October 12, 1936 (R. 21).

SUMMARY OF ARGUMENT

Section 10 of the Immigration Act of 1917, as amended, imposes upon vessels, their owners, and their officers "bringing an alien to * * * the United States" a duty "to prevent the landing of such alien."

The first question is whether the phrase "bringing an alien" is sufficiently broad to cover the case of a vessel that carries to a port of the United States an alien "through passenger", that is, one who had embarked at a foreign port for through passage via American ports to another foreign port. We contend for an affirmative answer. This answer is justified by the ordinary meaning of the verb "bring", and by the use of the verb in other parts of the immigration statutes. The result reached by this Court in *Taylor* v. *United States,* 207 U. S. 120, is not opposed. Indeed, a negative answer to this first question will create

a breach in an otherwise complete system of immigration regulation under which carriers are penalized if they fail to cooperate in preventing entry into the United States by undesirable aliens. If our construction is rejected and the petitioner's construction is accepted, a carrier that brings to this country an alien through passenger who is diseased or is a criminal or an anarchist will go unpunished even though the alien is landed without inspection and allowed to roam the streets of our sea-coast cities.

The second question is whether, before they are given by the immigration inspectors any notice to detain, a vessel and its officers are under a duty to detain alien passengers. We contend that the duty is automatic and arises before notice. This contention is supported by the words of the statute, and by its underlying policy of preventing a race for diligence between aliens and immigration authorities.

The third question is whether, if a notice to detain is required, the notice in this case was in proper form. The petitioner argues that the notice was invalid because it did not indicate a time and place where the alien might be landed, but instead required detention on board the vessel. To this argument we answer that neither the words nor the policy of the immigration law furnish any basis for the contention that every alien, no matter how undesirable, is entitled to be landed and to have his day in the United States.

ARGUMENT

I

SECTION 10 OF THE IMMIGRATION ACT OF 1917, AS AMENDED, IMPOSES UPON OFFICERS OF VESSELS A DUTY TO PREVENT THE LANDING IN THE UNITED STATES OF AN ALIEN PASSENGER WHO EMBARKED AT A FOREIGN PORT FOR THROUGH PASSAGE VIA AMERICAN PORTS TO ANOTHER FOREIGN PORT

The first sentence of Section 10 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, as amended by Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146) provides:

> That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, *bringing an alien to,* or providing a means for an alien to come to, *the United States,* to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. [Italics added.]

In the case at bar this section has been applied by the lower court to a ship's officer who negligently failed to prevent the landing in the United States of an alien passenger who had embarked at Brazil for through passage via New Orleans, Louisiana, and Galveston, Texas, to Japan. The petitioner contends that the lower court erred in holding that this section imposes any duty to prevent the land-

ing in the United States of such a so-called "through passenger." (Br. pp. 10–13.) It is its position that in transporting such a passenger the vessel was not, in the words of the statute, "bringing an alien to * * * the United States." In this connection he relies chiefly upon *Taylor* v. *United States,* 207 U. S. 120, and two decisions of the Circuit Court of Appeals for the Second Circuit, *The Habana,* 63 F. (2d) 812 (C. C. A. 2d), and *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035 (C. C. A. 2d).

We contend that the construction given to Section 10 by the court below is required by a literal interpretation of the statute. We further contend that any other construction will create a serious breach in an otherwise complete system whereby steamship companies are penalized if they allow any alien to land prior to inspection or if they convey to the United States any alien with a loathsome disease.

*A. The literal meaning of the phrase "bringing an alien * * * to the United States" imposes a duty in the case at bar.*

The petitioner (Br. 4) and ourselves are in accord in believing that the words in Section 10 with which we are particularly concerned are these:

> it shall be the duty of every person, including * * * officers * * * of vessels

> * * * bringing an alien to * * * the United States, to prevent the landing of such alien * * *

In view of the legislative history of this section,[1] we do not feel justified in arguing that the phrase "or providing a means for an alien to come to" (which appears in the statute between the phrase "bringing an alien to" and the phrase "the United States") is *directly*[2] in issue. We believe that the court below in the case at bar gave too much weight to this phrase. (R. 16.) In our opinion, as in the opinion of the Circuit Court of Appeals for the Second Circuit, the whole section must be read

---

[1] The report of the Senate Committee on Immigration, Senate Report No. 355 (Calendar No. 297), 63d Cong., 2d Sess., March 19, 1914, to accompany H. R. 6060, which later, as H. R. 10834, 64th Cong., became the Immigration Act of 1917, explains at page 9 the reason for inserting in Section 10 the phrase "or providing a means for an alien to come to." The report states that: "On page 20, line 10, after the words 'bringing an alien to,' insert 'or providing a means for an alien to come to'; this in order to make the provisions of the section apply to those who conduct toll roads and bridges, as well as to those operating ordinary vehicles of conveyance.

[2] We do, however, contend that the phrase "providing a means for an alien to come to" has an *indirect* bearing. See page 28, *infra*. By adopting this phrase, Congress imposed a penalty even on an international bridge company which does not prevent an alien who has not been passed by the immigration authorities from walking for five minutes into the United States. Thus it shows that Congress intended to penalize transportation companies which did not detain, until otherwise directed, every alien, no matter how short his stay in American territory.

distributively, and, so read, the phrase "providing a means for an alien to come to" applies only to international bridges and toll roads. *The Habana*, 63 F. (2d) 812, 813 (C. C. A. 2d).

Conceding that the phrase of chief importance is "bringing an alien to * * * the United States," we contend that, read literally, it embraces a case like that at bar where a carrier conveys to a port of the United States an alien whom he intends, and has every reason to expect, to take out again when the ship moves on.

It is clear that the dictionary definition[3] of "bring" signifies broadly conveyance to or toward a place. It does not imply a limitation such as that upon arrival the object conveyed will be brought in or will come to rest. And it would be peculiarly inappropriate to read any such limitation into the definition where, as here, the verb "bring" is used

---

[3] In the leading dictionaries the first meaning of the verb "bring" is given as follows:

(1) "implies motion towards the place where the speaker or auditor is." Murray, *New English Dictionary*, Vol. 1, p. 1107.

(2) "to convey, carry or conduct to the place where the speaker is." *Standard Dictionary* (1894) Vol. 1, p. 239.

(3) "to bear, convey or take along in coming." *The Century Dictionary and Cyclopedia*, Vol. 1, p. 685.

(4) "to cause to come with oneself, as by conveying, leading, or carrying, from one place to another, the direction of motion being always toward the place regarded as nearer to the person from whose point of view the action is contemplated." Webster's *New International Dictionary* (2d ed., unabridged, 1936) p. 337.

together with the preposition "to", not "in" or "into."

As helpful as the dictionaries are the immigration statutes themselves in revealing the meaning of the phrase "bringing an alien *to*, * * * the United States." This phrase, which occurs frequently in the Immigration Acts of 1917 and 1924, in most instances, is not used narrowly.[4] When Congress intended to draw a fine line, and to legislate only with respect to such transportation as contemplated the United States as a place of final destination, it used such expressions as "come *into* the United States," "bringing an alien *into* the United States" or "imports." This is plain from the very sections of the law to which the petitioner (Br. 12) points as an aid to construction.[5] And

---

[4] See, for example, Section 9 of the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 880–881, as amended by Section 26 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 166–167, U. S. C., Title 8, Sec. 145; and Section 11 of the Immigration Act of Feb. 5, 1917, 39 Stat. 882, U. S. C., Title 8, Sec. 11.

[5] The petitioner (Br. 12) refers to U. S. Code, Title 8, Sec. 142, which is Section 6 of the Immigration Act of Feb. 5, 1917, 39 Stat. 879. There it is made unlawful to "solicit * * * any alien to come *into* the United States by promise of employment." Petitioner next refers to U. S. Code, Title 8, Sec. 143, which is Section 7 of the 1917 Act, 39 Stat. 879. Again it is made unlawful for a carrier to "encourage * * * any alien to come *into* the United States," and it is provided that a carrier who brings to a port of the United States "any alien *so* solicited" shall be fined. Petitioner also points to U. S. Code, Title 8, Sec. 144, which is Section 8 of the 1917 Act, 39 Stat. 880. This section punishes carriers who "shall bring *into* or land in the United States" any alien not entitled to enter.

from a similar nice use of language elsewhere in the immigration law we may conclude that the phrases "come *into* the United States," "bringing an alien *into* the United States"[6] and "imports"[7] have become the appropriate words of art to indicate a conveyance to a place of final destination.

To assimilate to those words of art the phrase "bringing * * * to * * * the United States," and to justify an abnormally narrow construction of this phrase, the petitioner relies on a remark of Mr. Justice Holmes in *Taylor* v. *United States,* 207 U. S. 120, 124–125, which, if it is not an *obiter dictum,* is an alternative and, in our opinion, insupportable reason for a result with which we entirely agree.

In *Taylor* v. *United States,* there was involved Section 18 of the Immigration Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217,[8] the precursor of

[6] See Immigration Act of Feb. 5, 1917, c. 29; 39 Stat. 874: Sec. 3, 8th proviso, 39 Stat. 878; Sec. 8, 39 Stat. 880; Sec 14, 39 Stat. 884; Sec. 16, 39 Stat. 886.

[7] See the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874: Sec. 4, 39 Stat. 878; Sec. 19, 39 Stat. 889.

[8] "SEC. 18. That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers, and any such owner, officer, agent, or person in charge of such vessel who shall land or permit to land any alien at any time or place other than that designated by the immigration officers, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine for each alien so permitted to land of not less than one hundred nor more than one

the section with which we are now concerned. In that case the issue was whether the section applied to a master of a vessel who allowed to land in New York an alien sailor who had shipped at Hungary for the round trip, not to be paid off until he returned. In delivering the opinion of this Court "that the section does not apply to the ordinary case of a sailor deserting while on shore leave" (207 U. S. at 124), Mr. Justice Holmes said (207 U. S. 124–125):

> The reasoning is not long. The phrase which qualifies the whole section is, "bringing an alien to the United States." It is only "such" officers of "such" vessels that are punished. "Bringing to the United States", taken literally and nicely, means, as a similar phrase in § 8 plainly means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport. So again, literally, the later words "to land" mean to go ashore. To avoid certain inconveniences the Government and the courts below say that sailors do not land unless they permanently leave the ship. But the single word is used for all cases and must mean the same

---

thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, and every such alien so landed shall be deemed to be unlawfully in the United States and shall be deported, as provided by law."

thing for all, for sailors and other aliens. It hardly can be supposed that a master would be held justified under this section for allowing a leper to wander through the streets of New York on the ground that, as he expected the passenger to return and his expectations had been fulfilled, he could not be said to have allowed the leper to land. The words must be taken in their literal sense. "Landing from such vessel" takes place and is complete the moment the vessel is left and the shore reached. But it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so. The contrary always has been understood of the earlier acts, in judicial decisions and executive practice. If we reject the ambiguous interpretation of "to land", as we have, the necessary result can be reached only by saying that the section does not apply to sailors carried to an American port with a *bona fide* intent to take them out again when the ship goes on, when not only there was no ground for supposing that they were making the voyage a pretext to get here, desert and get in, but there is no evidence that they were doing so in fact. Whether this result is reached by the interpretation of the words "bringing an alien to the United States", that has been suggested, or on the ground that the statute cannot have intended its precautions to apply to the ordinary and necessary landing of

> seamen, even if the words of the section embrace it, as in *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, does not matter for this case.

The three principal reasons given in the above quotation for not applying the section to sailors are: (1) "bringing to the United States" means transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport; (2) the administrative authorities conceded that the section had no application to seamen who land and later return to the ship, yet, without any verbal justification for the distinction, they were attempting to apply the section to seamen who land and do not later return to the ship; and (3) it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so.

We entirely concur in the second and third of these reasons. The first reason requires closer scrutiny. In the exact form in which it was phrased in *Taylor* v. *United States,* it does not seem to us, and indeed apparently did not seem to Mr. Justice Holmes,[9] an entirely satisfactory ground

---

[9] Note that at page 125, as quoted above, Mr. Justice Holmes said: "Whether this result is reached by the interpretation of the words 'bringing an alien to the United States', that has been suggested, or on the ground that the

upon which to rest the judgment. As phrased in *Taylor* v. *United States,* this first reason really has two subdivisions. First, it is pointed out that "bringing to the United States" means transporting "for the sake of transport"—not transporting "merely as incident to employment on the instrument of transport." (207 U. S. at 125.) Second, it is said that "bringing to the United States" means transporting "with intent to leave in the United States"—not transporting "with intent to carry back." (207 U. S. at 125.) The first subdivision seems to us sound, and is in thorough accord with a decision at circuit by Chief Justice Marshall where he construed an analogous statute. *The Wilson* v. *United States,* Fed. Case No. 17,846, 30 Fed. Cas. 239, 244 (C. C. D. Va.).[10]

---

statute cannot have intended its precautions to apply to the ordinary and necessary landing of seamen, even if the words of the section embrace it, as in *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, does not matter for this case."

[10] I nthat case Marshall, C. J., held that the Act of Feb. 28, 1803, c. 10, 2 Stat. 205, forbidding any master of a vessel to import or bring, into any port of the United States, any negro, where the importation of such person is prohibited by the laws of such State, did not apply to colored seamen employed in navigating such vessel. In so deciding, Marshall, C. J., said (p. 244):

> The agent, or those who are concerned in the agency or importation, are not, in common language, said to be imported or brought in. It is true that a vessel coming into port, is the vehicle which brings in her crew, but we do not in common language say, that the mariners are "imported", or brought in by a particular vessel; we rather say that they bring in the vessel. * * *

The second subdivision, upon which exclusive reliance has been placed by the petitioner in the case at bar, and by the Circuit Court of Appeals for the Second Circuit in *The Habana,* 63 F. (2d) 812, 813 (C. C. A. 2d) and *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035, 1037 (C. C. A. 2d), seems to us unsound. It is contrary to the dictionary meaning of "bring", see page 11, *supra,*[11] and to the reasoning of this Court in *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 122.[12] Furthermore, it is contrary to the following example given by Mr. Justice Holmes himself on the very page of the opinion in the *Taylor* case to which the petitioner points (p. 125):

> It hardly can be supposed that a master would be held justified under this section for allowing a leper to wander through the streets of New York on the ground that, as

---

[11] Note that in *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035 (C. C. A. 2d), Judge A. N. Hand pointed out (p. 1036) that "If taken literally, section 9 might be regarded as justifying the action of the Department" in construing the phrase "bringing * * * to the United States" as including transporting to an American port an alien passenger whose original plan was to proceed with the vessel to Cuba.

[12] The National Prohibition Act, considered in that case, prohibited the "transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States." In holding that this forbade a foreign vessel carrying to a port of the United States intoxicating liquors for beverage purposes as part of a ship's sea stores, this Court pointed out (p. 122): "transportation comprehends any real carrying about or from one place to another."

> he expected the passenger to return and his expectations had been fulfilled, he could not be said to have allowed the leper to land.

This quotation shows that Mr. Justice Holmes thought the statute would impose on the master a duty with respect to a *passenger* conveyed to the port of New York even though the passenger had no intent to stay in the United States but expected to continue with the vessel on its way to some other port. Thus, on the exact facts of this case, *Taylor* v. *United States* is perhaps as much an authority in our favor as against us.

B. *If the literal meaning of the section were doubtful, it should be construed to impose a duty in a case of this sort, in order to avoid a grave risk of entries by undesirable aliens, and in order to prevent a breach in an otherwise complete system of immigration regulation.*

If the literal meaning of Section 10, as amended, were doubtful, there are pressing reasons for adopting the construction we urge. The petitioner's brief (pp. 8–9, 16), undoubtedly in good faith, gives the impression that Section 10 is, if not superfluous, at least cumulative, and that other provisions of the immigration law will ensure the cooperation of carriers in guarding against the risk of entry by an undesirable alien who is making a "through" trip. This is not the case. It is true that the individual "through passenger" who enters without inspection will be deported and punished, if the authorities apprehend him. Section

14 of the Immigration Act of May 26, 1924, 43 Stat. 162, U. S. C., Title 8, Sec. 214; Act of March 4, 1929, c. 690, 45 Stat. 1551, U. S. C., Title 8, Sec. 180a. But such apprehension, as the authors of the immigration law well knew, is a doubtful event and an ineffective method of enforcement. The true safeguard lies in securing the cooperation of the carrier in preventing the entry. And Section 10 is the only part of the immigration statutes which enforces carrier cooperation in the case of a "through" passenger. As we propose to show in detail, unless that section applies, a "through" passenger who had never been examined by any doctor, or consul, or immigration officer, could easily set foot in any one of our sea-coast towns, and could, if he were diseasesd, or a criminal, or an anarchist, do incalculable damage before he was apprehended.

Where an alien, such as Salvatore Sprovieri in the instant case, starts from a foreign port on a vessel that is to carry him via an American port to another foreign port, he need not have any immigration or passport documents, even though he plans to, and does in fact, spend a short time in the United States while his vessel is in port. Though an alien,[13] he is not an immigrant,[14] and so requires

---

[13] Section 1 of the Immigration Act of Feb. 5, 1917, c. 29, 39 Stat. 874; Sec. 28 (b) of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 168.

[14] Section 3 (2) of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 154.

no immigration visa or reentry permit. Moreover, since he is a "through passenger," he requires no passport or passport visa, but may land without documents of any kind, if the immigration officials consent.[15] Thus he comes to our ports without any

---

[15] Visas on alien passports are provided for in the Act of May 22, 1918, c. 81, 40 Stat. 559, as extended by the Act of March 2, 1921, c. 113, 41 Stat. 1205, 1217. Pursuant to the authority conferred on him in those statutes, the President has, by successive executive orders, required that aliens coming to this country under certain circumstances must present passports duly visaed by consular officers of the United States. But these executive orders, including the one which was in effect when Sprovieri arrived at American ports (Executive Order No. 5426, August 20, 1930) have always specifically exempted:

> II * * * (2) Aliens who are through passengers on vessels touching at ports of the United States. In this connection the term "United States" is to be construed as in section 1 of the Immigration Act of 1917. They may land temporarily, under regulations prescribed by the Secretary of Labor * * *.

The only pertinent regulation prescribed by the Secretary of Labor and in force at the time Sprovieri arrived in the United States was Rule 3, Subdivision H, paragraph 6, of the "Immigration Laws and Rules of January 1, 1930," discussed at page 35, *infra*, which provides (p. 125):

> PAR. 6. Aliens who are through passengers on vessels touching at ports of the United States may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is denied the alien and call the master's attention to the requirements and fine provisions of section 27 of the immigration act of 1924. Aliens

preliminary examination of any sort, and any dangerous disease or revolutionary traits that he may have are unknown to our authorities.

To protect us against the danger that such an alien presents, the petitioner seems to suggest (Br. 8–9) that we have the safeguard of Sections 11 and 18 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 881, 887, U. S. C., Title 8, Secs. 147 and 154. But we submit that neither of these is an adequate protection.

Section 11 [16] (referred to by the petitioner as Section 147) provides that for the purpose of deter-

---

landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

[General Order No. 201, dated March 3, 1933, which is referred to by the Circuit Court of Appeals (R. 17) was not adopted until after the time that Sprovieri arrived in the United States.]

[16] "SEC. 11. That for the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded by this Act, either by reason of being afflicted with any of the diseases or mental or physical defects or disabilities mentioned in section three hereof, or otherwise, or whenever the Secretary of Labor has received information showing that any aliens are coming from a country or have embarked at a place where any of said diseases are prevalent or epidemic, the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them, or in a United States immigration station at the expense of such vessel, as circumstances may require or justify, a sufficient time to enable the immigration officers and medical officers stationed at such ports to sub-

mining whether aliens arriving at ports of the United States are excludable, "the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them." The first point to notice about this section is that it imposes no penalty whatsoever. Hence it is an almost useless provision. A second point is that it requires detention of aliens "on board the vessel *bringing* them, or in a United States immigration station." If a "through passenger" is not "brought" within the meaning of Section 10, then it would seem that he is not "brought" within the meaning of Section 11. (Cf. Petitioner's Brief, pp. 12–13.)

Section 18[17] (referred to by the petitioner as Section 154) has two provisions which might be

---

ject such aliens to an observation and examination sufficient to determine whether or not they belong to the said excluded classes by reason of being afflicted in the manner indicated: *Provided*, That, with a view to avoid undue delay in landing passengers or interference with commerce, the Commissioner General of Immigration may, with the approval of the Secretary of Labor, issue such regulations, not inconsistent with law, as may be deemed necessary to effect the purposes of this section: *Provided further*, That it shall be the duty of immigrant inspectors to report to the Commissioner General of Immigration the condition of all vessels bringing aliens to United States ports."

[17] "SEC. 18. That all aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Secretary of Labor immediate

thought relevant. The first stipulates that it shall be unlawful for a carrier to refuse to receive back on board, and detain when returned, aliens brought to this country in violation of law. This provision does not prevent the damage of an undesirable entry; it merely charges the carrier with the re-

---

deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; * * * and if it shall appear to the satisfaction of the Secretary of Labor that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of $300 for each and every violation of any provision of said sections; * * *. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: * * *"

sponsibility of taking back and detaining a passenger who has already disembarked. Moreover, like Sections 10 and 11, it refers to aliens "brought to this country," and if the phrase has the narrow limitations for which the petitioner contends, then the petitioner, to be consistent, must admit that the provision does not embrace "through passengers."

The other pertinent provision in Section 18 prohibits the landing of an alien who has already been examined and certified as diseased. There are three reasons why this provision is not very helpful: (1) no penalty is attached; (2) the only defect guarded against is disease, so that, for example, an anarchist is not covered; and (3) the provision goes into effect only after examination and certificate, and does not prohibit landing an alien prior to those events.

From this analysis of other parts of the immigration law, we conclude that the only provision that can be effectively applied to require the detention of diseased or revolutionary "through passengers" and prevent them walking the streets of our seacoast cities is Section 10 of the Immigration Act as amended.[18]

---

[18] The petitioner may point to Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924, U. S. C., Title 8, Sec. 145; but that section, like the one with which we are now concerned, speaks of carriers who "bring to the United States" an alien. The sections are *in pari materia*, and undoubtedly the phrase would receive the same construction in each case. Cf. *Dollar S. S. Line* v. *Elting*, 51 F. (2d) 1035, 1036 (C. C. A. 2d).

The petitioner's construction of Section 10 not only leaves us without this essential safeguard, it creates for the "through passenger" a unique exception to an otherwise complete system whereby carriers are penalized if they allow aliens to enter prior to inspection or consent by the immigration authorities. Of course, carriers may be required to detain immigrants and those coming to this country temporarily for business or pleasure. Compare *United States* v. *Steamship Coamo,* 267 U. S. 220. They are also responsible for the unauthorized landing of stowaways, *The Manuel Arnus,* 75 F. (2d) 943 (C. C. A. 2d), certiorari denied, 295 U. S. 756, and (under statutes passed since *Taylor* v. *United States*) of seamen whose detention is requested. Section 20 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 164, replacing Section 32 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 895. Compare *Compagnie Generale Transatlantique* v. *Elting,* 298 U. S. 217. And the reasoning of this Court in *Lloyd Sabaudo Societa* v. *Elting,* 287 U. S. 329, 340,[19] indicates that carriers would be responsible

[19] In that case there was involved Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Immigration Act of 1924 (43 Stat. 166; U. S. C., Title 8, Sec. 145), which penalizes carriers who "bring to the United States" diseased aliens. A vessel of the Lloyd Sabaudo Line carried to New York one Capaldo, who intended to pass in transit through the United States to Canada. Capaldo was in fact diseased, and for carrying him the line was required to pay a fine exacted by the Secretary of Labor.

for failure to detain, pending examination, a passenger who was not coming to the United States to stay here, but who was in transit through American territory to a foreign destination.

We submit that there is no reason to apply a different rule to "through passengers." The demands of such through passengers are neither imperative nor unforeseeable. Unlike sailors, through passengers are not habitually granted shore leave and would not feel restrained if prevented from landing. Moreover, in those cases in which through passengers may ask to get off in port and view the city while the vessel is in the harbor, their request is foreseeable by the carrier. The carrier knows that the possibility of landing exists and may be realized even though the passenger has no immigration visa or passport. See pages 20–22, *supra*. To penalize the carrier who does not detain the "through passenger" until landing permission is given is, therefore, not unreasonable. And such a

---

The carrier brought suit to recover the fine, urging that Capaldo was not "brought" to the United States since both he and the line intended that he should go to Canada. In making this argument the carrier laid particular stress both in the lower courts and in this Court on *Taylor* v. *United States*. See *Lloyd Sabaudo Societa* v. *Elting*, 45 F. (2d) 405, 409 (S. D. N. Y.); s. c. 55 F. (2d) 1048, 1051 (C. C. A. 2d). See briefs in this Court, Oct. Term, 1932, No. 48, Pet.'s Br., p. 49; Resp.'s Br., p. 37. However, this Court sustained the fine, 287 U. S. 329. The reasoning of this Court applies *pari passu* to Section 10 of the Immigration Act of 1917, as amended, which is obviously *in pari materia* with Section 9. See preceding footnote.

penalty is at least as necessary as one placed upon an international bridge company which has not prevented an alien from walking across the bridge into the United States for five minutes. See footnote 2, page 10, *supra*.

The reading of the phrase "bring to the United States" for which the petitioner contends establishes without reason, and in defiance of that administrative simplicity which is essential to expeditious handling of aliens, a preferred classification for through passengers. Moreover, it creates a serious breach in Section 10, and, by parallel reasoning, in Section 9 and other parts of the immigration law. To avoid such consequences, the phrase, even if its literal definition were narrow, should be broadly construed to cover through passengers. We submit that in taking the normal, broad construction, the Circuit Court of Appeals for the Fifth Circuit in this case, and the Circuit Court of Appeals for the Ninth Circuit in *The Nanking,* 290 Fed. 769, 772 (C. C. A. 9th), have reached the only result consistent with the policy of the immigration laws, and that the narrower view taken by the Circuit Court of Appeals for the Second Circuit opens the door whereby a host of aliens may enter without any prior inspection.

II

SECTION 10 OF THE IMMIGRATION ACT OF 1917, AS AMENDED, *IPSO FACTO* IMPOSES A DUTY TO DETAIN, AND NO NOTICE FROM THE IMMIGRATION AUTHORITIES IS REQUIRED AS A CONDITION PRECEDENT TO THE EXISTENCE OF THE OBLIGATION.

In some parts of the immigration law, a carrier or officer is under no duty to detain an alien until he receives from the immigration authorities notice to do so. This, for example, is true of that part of Section 20 (a) of the Immigration Act of 1924 which was considered by this Court at the last term. *Compagnie Generale Transatlantique* v. *Elting*, 298 U. S. 217. See footnote 22 on page 33, *infra*.

But in Section 10 of the Immigration Act of 1917, as amended, the duty is absolute and automatic. The immigration authorities do not need to take any action as a condition precedent to creating an obligation to detain. They do, however, have the power to terminate the obligation since they may permit landing. Thus it may be said that they have the power to loose, but not to bind.

That this is the correct interpretation of Section 10 is shown by its wording, and by its underlying policy.

The statute, without ambiguity, states "That it shall be the duty of * * * officers * * * of vessels * * * bringing an alien to * * * the United States, to prevent the landing of such alien in the United States at any time or place other than

as designated by the immigration officers. Any such person * * * who fails to comply with the foregoing requirements shall * * * be punished." The only requirement is the absolute obligation to prevent the landing, not to obey an order of some administrative official.

Petitioner suggests (Br. 6–7) that the unambiguous words of subsection (a) which we have just quoted mean something different from what they appear to mean on first impression. Petitioner suggests that the duty they prescribe is not a duty to prevent landing, but a duty to present aliens at a particular time and place, and then only if such time and place are designated by immigration officers. To justify so distorted a construction of the plain words of subsection (a), petitioner invokes the aid of subsection (b), which provides that:

> (b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

In the first place, this subsection is of doubtful aid in the construction of subsection (a) because it was not adopted contemporaneously with it. Subsection (a) has a long history, and appears in much its present form in Section 18 of the Act of March 3, 1903, c. 1012, 32 Stat. 1213, 1217, Section 10 of the Immigration Act of February 5, 1917, c. 29,

39 Stat. 874, 881, and Section 27 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 167. On the other hand, subsection (b) did not appear until the 1924 Act. (43 Stat. 168.) In the second place, subsection (b) does not purport to be co-extensive with subsection (a). It is designed merely to furnish a ready method of proof in *one* of a number of situations that may arise under the operation of subsection (a), and not to cover all of them. An obvious example will show that subsection (b) is not co-extensive with and does not set limits to subsection (a). If an immigration inspector saw a ship's master helping an immigrant to disembark before inspection, clearly the inspector's testimony would be enough to sustain a conviction of the master under Section 10, although the inspector had never stopped to issue an order requiring the master to present that alien at some particular time and place.[20]

---

[20] In order to show that the carrier's duty is a duty to present aliens at a particular place when so requested, rather than a duty to detain aliens until otherwise instructed, petitioner also (Br. 7–8) relies on Section 23 of the Act of Feb. 5, 1917, c. 29, 39 Stat. 892, U. S. C., Title 8, Sec. 102, and Section 2 of the Act of March 4, 1929, c. 690, 45 Stat. 1551, U. S. C., Title 8, Sec. 180 (a). The former section is clearly irrelevant. It merely gives to the Commissioner General of Immigration (whose title since Section 14 of Executive Order No. 6166, June 10, 1933, see United States Code *Annotated*, Title 5, Sec. 132, has been changed to the Commissioner of Immigration and Naturalization) the power to make appropriate contracts with railroad carriers so that trains will not be held up at the border but may, while the

The construction for which we contend, i. e., one that imposes an automatic duty to detain until otherwise notified, is required by the policy as well as the language of the statute. If the carrier were under no duty to detain until he received notice, then the carrier could with immunity allow the landing of any alien who moved more quickly than the immigration officials. To allow such a race against authority would cripple the strength of Section 10.[21] We submit that the plain policy of

---

immigration inspectors pass through the cars, proceed into the United States. This is an unusual privilege which, as Section 10 itself recognizes, is an exception to the normal duty of a carrier to detain aliens until otherwise directed, and which, as Section 23 states, is given "so as not unnecessarily to delay, impede, or annoy persons in ordinary travel." Section 2 of the Act of March 4, 1929, is likewise of no value in supporting petitioner's position. This statutory provision, which is obviously not part of the 1917 or 1924 immigration Acts, and is therefore of doubtful aid in construing them, penalizes not carriers but aliens. Moreover, it penalizes an alien not only if he "enters the United States at any time or place other than as designated by immigration officials", but also if he "eludes examination or inspection by immigration officials." In other words, the alien is required to stay out of the United States until he is inspected and until he is told he may enter. Such a requirement parallels the requirement which we say is imposed upon the carrier and is difficult to reconcile with the requirement which petitioner says is imposed upon the carrier.

[21] Furthermore, it would prevent the full application of Section 15 of the Immigration Act of 1917, U. S. C., Title 8, Sec. 151, which declares that "upon the arrival at a port of the United States of any vessel bringing aliens it shall be

the statute is to require the carrier to detain unless and until the authorities have given permission for landing.[22]

III

IF A NOTICE TO DETAIN IS A CONDITION PRECEDENT TO THE EXISTENCE OF A DUTY TO DETAIN, THE NOTICE IN THIS CASE WAS IN PROPER FORM AND PROPERLY SERVED.

In this case the District Court found that notice was "duly served upon the Officers of the Steamship" SANTOS MARU "to hold the alien [Spro-

---

the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens * * *."

[22] We submit that the petitioner is mistaken in contending (Br. 8–9) that our construction of Section 10 of the Immigration Act of 1917 is inconsistent with Section 20 (a) of the Immigration Act of 1924. U. S. C., Title 8, Sec. 167. That section deals with detention of seamen in two different situations. Prior to examination of the seamen by immigration authorities, the carrier has an absolute duty to detain, as this Court seems to have recognized in *Compagnie Generale Transatlantique* v. *Elting*, 298 U. S. 217, 223, line 8. After examination, "A duty so to detain does not arise unless and until such detention is required by the immigration officer." 298 U. S. 223, lines 12–14. The reason for this distinction in Section 20 (a) is obvious and consonant with our argument. Prior to examination, the immigration officials cannot know whether or not they want the alien detained, so an absolute duty rests on the carrier. After the examination, the carrier cannot know its result, but the immigration officials do know. Hence, if they want the alien detained, they, having the information revealed by the examination, must give the carrier notice.

vieri] on board at all ports of the United States at which such Steamship might touch." (R. 7, fdg. b.) The order of detention was violated and "said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law." (R. 8, fdg. c.) In the libel it was charged that the "owners, masters, officers and agents [of the SANTOS MARU] had violated the provisions of Section 146, Title 8, United States Code," i. e., Section 10 of the Immigration Act of 1917, as amended. (R. 4, par. V, lines 4–6.) And for this violation it was prayed that the United States have a decree for its penalty of $1,000 and that the "Santos Maru" be forfeited or sold to satisfy the Government's lien for that penalty. (R. 4, par. VI.)

The petitioner contends (Br. 8–10) that the notice to detain was improper because it required the ship's officers to keep the alien on board and did not name any time or place at which the alien could be landed.

It is our position that the statute does not purport to require that every alien shall have his day in the United States. It is unthinkable that because a leper or anarchist is brought to our shores, we must accommodate him. There is nothing in the language of this particular section that goes so far. Indeed, other provisions of the immigration

laws show that there exists no unqualified right to land even for inspection.[23]

That the right to land even temporarily is a matter within the discretion of the immigration officials is shown not only by the statute but also by Executive Order No. 5426, which we have already quoted at page 21, *supra,* and by Immigration Rule 3, Subdivision H, paragraph 6, quoted at pages 21–22, *supra,* and adopted pursuant to authority conferred by Section 23 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 892, and Section 24 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 166.

Of course, the fact that sometimes, as in *United States* v. *Steamship Coamo,* 267 U. S. 220, relied upon by the petitioner (Br. 9, 13), the immigration authorities do, as a matter of grace, indicate a time and place for landing, does not establish for carriers, as by some sort of prescription, a right always to land all passengers.

Another point, which has not been stressed by the petitioner, seems to us, in view of *Compagnie Generale Transatlantique* v. *Elting,* 298 U. S. 217,

---

[23] Thus in Section 15 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 885, it is provided that immigration officers shall have discretion to examine aliens, either on board the vessel or at land stations to which they are removed. See also Sections 11 and 18, quoted in part and discussed at pages 22–25, *supra.*

to deserve some mention: that is, assuming *arguendo* that a notice of detention is required, the question arises whether it was served upon the party now sought to be charged.

We do not believe that this point is open to the petitioner since in his petition for certiorari he did not set forth any specification of error based upon it, and since his brief does not touch it. *Morehead* v. *People ex rel. Tipaldo,* Oct. Term, 1935, No. 838, June 1, 1936; *Clark* v. *Williard,* 294 U. S. 211, 216. However, if the point were open, we submit it would be without merit. The notice to detain was "duly served upon the Officers of the Steamship." (R. 7, fdg. b.) And this libel proceeding was based on the fact that the "owners, masters, officers and agents had violated the provisions of" Section 10 of the Immigration Act of 1917 as amended. (R. 4, par. V.) Thus the officers of the vessel, who are the ones against whom the penalty is invoked (cf. R. 15, line 2) were given due notice. The situation is unlike that before this Court in the *Compagnie Generale Transatlantique* case, *supra,* where the notice was given to the master, but the duty and the penalty were sought to be imposed upon the owner.

CONCLUSION

Wherefore it is respectfully submitted that the decree of the court below should be affirmed.

STANLEY REED,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
CHARLES E. WYZANSKI, JR.,
Special Assistant to the Attorney General.
WILLIAM W. BARRON,
JOHN M. SULLIVAN,
Attorneys.

BRIEN S. ODEM,
Assistant United States Attorney.
ALBERT E. REITZEL,
Assistant Solicitor of the Department of Labor.
EDWARD J. GARRAHAN,
Attorney.

NOVEMBER 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 224.—October Term, 1936.

Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru", Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Apppeals for the Fifth Circuit.

[February 1, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

Section 10 (a) of the Immigration Act of February 5, 1917, as amended, Title 8 U. S. C. § 146, makes it the duty of every person including owners, masters, officers, and agents of vessels or transportation lines, "bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers." Failure to comply with the provision constitutes a misdemeanor punishable by fine or imprisonment or both. If the Secretary of Labor is of opinion that a prosecution is impracticable or inconvenient, a penalty of $1,000 is imposed and a lien upon the vessel is created for which such vessel shall be libeled in the appropriate United States court.

By subdivision (b) of § 10, proof that the alien failed to present himself at the time and place designated by the immigration officers constitutes *prima facie* evidence that the alien has landed at a time or place other than that designated.

On June 11, 1932, the Santos Maru came into the port of New Orleans with Salvatore Sprovieri, an alien passenger, on board. The passenger was en route from Brazil to Japan upon a through ticket; and was not entitled to enter the United States. On arrival of the steamship, the immigration officers at New Orleans issued a written order to the steamship to hold the alien on board at all ports of the United States at which the ship might touch—the order being duly served upon the officers of the ship. A few days later,

the ship arrived at the port of Galveston, Texas; and there, by the negligence of the ship, its officers and crew, the alien passenger was allowed to escape and land in the United States without permission of the immigration officers and in violation of their order. Officers of the ship notified the immigration authorities of the escape of the passenger; but the ship sailed before his arrest. Subsequently, the passenger was arrested and deported on another vessel of the same line.

The Secretary of Labor was of opinion that it was impracticable and inconvenient to prosecute the matter criminally; and a libel was filed on behalf of the United States in the appropriate federal district court, praying a decree for the $1,000 penalty and to enforce the lien therefor against the ship.

The district court took the view that, the alien passenger not being bound for the United States but en route from Brazil to Japan, the ship was not liable, and dismissed the libel with prejudice. The circuit court of appeals held otherwise, reversed the decree and remanded the cause with instructions to enter a decree for the United States. 84 F. (2d) 482.

The basic contention of petitioner, in its assault upon the latter decree, is that one who transports an alien passenger from one foreign country to another, does not bring him to the United States, within the meaning of § 10, by entering, with the alien on board, an American port of call on the way. If it were not for a sentence contained in the opinion of this court in *Taylor* v. *United States, infra,* of which we shall speak later, we might dispose of this contention by simply saying that it is contrary to the unambiguous terms of the section. Nothing can be plainer than that a ship which enters one of our ports has come to the United States; and a passenger on board obviously has come with the ship, and consequently has been brought by the ship to the United States. And this remains none the less the fact, although the ship continue on her way to a foreign port, and although it was intended that the passenger should go with her, and not be left in the United States. To say that the passenger has not been brought to the United States unless the intent was to leave him here, is not to construe the statute but to add an additional and qualifying term to its provisions. This we are not at liberty to do under the guise

of construction, because, as this court has so often held, where the words are plain there is no room for construction. *United States* v. *Wiltberger,* 5 Wheat. 76, 95-96; *Hamilton* v. *Rathbone,* 175 U. S. 414, 419, 421; *United States* v. *Hartwell,* 6 Wall. 385, 396; *Crooks* v. *Harrelson,* 282 U. S. 55, 59-60.

It is urged that the statute is highly penal in character and should therefore be construed strictly. But the object of all construction, whether of penal or other statutes, is to ascertain the legislative intent; and in penal statutes, as in those of a different character, "if the language be clear, it is conclusive." *United States* v. *Hartwell, supra,* pp. 395-396; *United States* v. *Corbett,* 215 U. S. 233, 242; *Sacramento Nav. Co.* v. *Salz,* 273 U. S. 326, 329-330.

The duty of the ship is to prevent the landing of through alien passengers except by permission. The United States is under no obligation to permit the temporary landing of such passengers at its ports at all. A detention order is not necessary, although one was issued in this instance; for the case is not one where landing is permitted if not forbidden by the immigration officials, but where it is forbidden unless permitted. Section 10 is not like, for example, § 20 of the Immigration Act of 1924, which imposes a fine upon the owner, charterer, agent, consignee, or master of a vessel arriving in the United States who fails, after inspection, to detain an alien seaman employed on the vessel "if required" by the immigration officer in charge of the port to do so. Under that provision, "A duty so to detain does not arise unless and until such detention is required by the immigration officer." *Compagnie Generale* v. *Elting,* 298 U. S. 217, 223. Under § 10, however, the duty is imposed by the statute and not by requirement of the immigration officials. The matter is taken care of by a regulation of the Secretary of Labor (Rule 3, subdivision H, ¶6, "Immigration Laws and Rules of January 1, 1930", p. 125), which provides that through alien passengers "may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage . . ."

The main reliance of petitioner is on *Taylor* v. *United States,* 207 U. S. 120, 124, 125. That case arose under § 18 of the Immigration Act of March 3, 1903, which imposes the duty upon a ship

bringing an alien to the United States to adopt due precautions to prevent the landing of such alien at any time or place other than that designated by the immigration officers. This court held that the provision did not apply "to the ordinary case of a sailor deserting while on shore leave." In the course of the opinion it was said that the phrase "bringing an alien to the United States" meant "transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport." "Intent to leave" is right enough as applied to a seaman on the ship, but it may not be extended to include an alien through passenger.

The court there was dealing with and thinking of a sailor, and not of an alien through passenger; and its language must be read accordingly, for—"It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision." *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 626-627. The point to be observed in the *Taylor* case is that the transportation of the sailor was merely as an "incident to employment on the instrument of transport." That is to say, the sailor was one of the agencies which brought the ship in, rather than an alien brought in by the ship. "It is true", Chief Justice Marshall said in *The Wilson* v. *United States*, 1 Brock. 423, 30 F. Cas. 239, 244, "that a vessel coming into port, is the vehicle which brings in her crew, but we do not in common language say, that the mariners are 'imported,' or brought in by a particular vessel; we rather say they bring in the vessel." The generality of the affirmative phrase, "transporting with intent to leave in the United States," is obviously qualified by the negative form of expression immediately following, "not transporting with intent to carry back and *merely as incident to employment on the instrument of transport.*" (Italics supplied.)

When we consider the relation of the sailor to the ship—that he is, for all practical purposes, a part of it and not, like a passenger, apart from it—it is quite apparent that the word "alien" as used

in § 10 does not, and was not intended to, include an alien sailor. Some of those engaged in the operation of a vessel must go ashore. They may be required to load and unload the cargo, to communicate with the local representatives of the line, and necessarily to perform a variety of duties which require their presence ashore. A denial of the privilege would be so likely to adversely affect commerce as to require much plainer language than we find in § 10 to justify the conclusion that Congress had denied it. To adopt that conclusion would be to declare that the act was violated whenever a member of the crew was sent ashore to perform an act imperatively necessary in the service of the ship.

Petitioner cites, also in support of its contention, *The Alfonso XIII,* 53 F. (2d) 124, 126; *Dollar S. S. Line* v. *Elting,* 51 F. (2d) 1035; and *The Habana,* 63 F. (2d) 812; but those decisions were expressly based upon what was regarded as the controlling effect of the phrase which we have quoted from the *Taylor* case; and from a reading of the opinions it seems quite evident that but for that the decisions would have been otherwise. For example, Judge Woolsey, in *The Alfonso XIII,* said that if he were dealing with the matter *de novo,* uninstructed by judicial authority above him, he would have found it difficult to give the words "bringing an alien to the United States" a meaning different from what they literally mean.

We reject the notion that in the case with which we are now concerned it is necessary to constitute the act of bringing an alien to the United States that there should be an intent to leave him here.

We see nothing in the suggestion that subdivision (b) of § 10 sustains petitioner's view of the case. That subdivision simply provides a rule of evidence affecting the burden of proof, and we think does not in any way restrict the plain meaning of § 10 (a) as we have found it.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.